

any final Federal agency action in a court of competent jurisdiction.

(d) Savings clause

Nothing in this subchapter—

(1) supersedes, amends, or modifies any Federal statute or affects the responsibility of any Federal officer to comply with or enforce any statute; or

(2) creates a presumption that a covered project will be approved or favorably reviewed by any agency.

(e) Limitations

Nothing in this subchapter preempts, limits, or interferes with—

(1) any practice of seeking, considering, or responding to public comment; or

(2) any power, jurisdiction, responsibility, or authority that a Federal, State, or local governmental agency, metropolitan planning organization, Indian tribe, or project sponsor has with respect to carrying out a project or any other provisions of law applicable to any project, plan, or program.

(Pub. L. 114-94, div. D, title XLI, § 41007, Dec. 4, 2015, 129 Stat. 1758; Pub. L. 117-58, div. G, title VIII, § 70801(e), Nov. 15, 2021, 135 Stat. 1293.)

Editorial Notes

REFERENCES IN TEXT

NEPA, referred to in subsec. (a)(1)(B), (2)(A), means the National Environmental Policy Act of 1969, Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to this chapter. See section 4370m(16) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

CODIFICATION

Section was enacted as part of the Fixing America's Surface Transportation Act, also known as the FAST Act, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

AMENDMENTS

2021—Subsec. (a)(1)(A). Pub. L. 117-58, § 70801(e)(1)(A), substituted “the claim” for “the action” and “of notice of final agency action on the authorization” for “of the final record of decision or approval or denial of a permit”.

Subsec. (a)(1)(B)(i). Pub. L. 117-58, § 70801(e)(1)(B), substituted “the claim” for “the action”.

Subsec. (e). Pub. L. 117-58, § 70801(e)(2), substituted “this subchapter” for “this section” in introductory provisions.

§ 4370m-7. Reports

(a) Reports to Congress

(1) Executive Director annual report

(A) In general

Not later than April 15 of each year for 10 years beginning on November 15, 2021, the Executive Director shall submit to Congress a report detailing the progress accomplished under this subchapter during the previous fiscal year.

(B) Opportunity to include comments

Each councilmember, with input from the respective agency CERPO, shall have the opportunity to include comments concerning

the performance of the agency in the report described in subparagraph (A).

(2) Quarterly agency performance report

The Executive Director shall submit to Congress a quarterly report evaluating agency compliance with the provisions of this subchapter, which shall include a description of the implementation and adherence of each agency to the coordinated project plan and permitting timetable requirements under section 4370m-2(c) of this title.

(3) Agency best practices report

Not later than April 15 of each year, each participating agency and lead agency shall submit to Congress and the Director of the Office of Management and Budget a report assessing the performance of the agency in implementing the best practices described in section 4370m-1(c)(2)(B) of this title.

(b) Comptroller general report

Not later than 3 years after December 4, 2015, the Comptroller General of the United States shall submit to Congress a report that describes—

(1) agency progress in making improvements consistent with the best practices issued under section 4370m-1(c)(2)(B) of this title; and

(2) agency compliance with the performance schedules established under section 4370m-1(c)(1)(C) of this title.

(Pub. L. 114-94, div. D, title XLI, § 41008, Dec. 4, 2015, 129 Stat. 1760; Pub. L. 117-58, div. G, title VIII, § 70801(f), Nov. 15, 2021, 135 Stat. 1293.)

Editorial Notes

CODIFICATION

Section was enacted as part of the Fixing America's Surface Transportation Act, also known as the FAST Act, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

AMENDMENTS

2021—Subsec. (a). Pub. L. 117-58 added subsec. (a) and struck out former subsec. (a) which required, for a period of 10 years beginning on Dec. 4, 2015, Executive Director to submit annual reports to Congress on progress accomplished under this subchapter during previous fiscal year.

§ 4370m-8. Funding for governance, oversight, and processing of environmental reviews and permits

(a) In general

For the purpose of carrying out this subchapter, the Executive Director, in consultation with the heads of the agencies listed in section 4370m-1(b)(2)(B) of this title and with the guidance of the Director of the Office of Management and Budget, may, after public notice and opportunity for comment, issue regulations establishing a fee structure for sponsors of covered projects to reimburse the United States for reasonable costs incurred in conducting environmental reviews and authorizations for covered projects.

(b) Reasonable costs

As used in this section, the term “reasonable costs” shall include costs to implement the re-

quirements and authorities required under sections 4370m-1 through 4370m-7 of this title, including the costs to agencies and the costs of operating the Council.

(c) Fee structure

The fee structure established under subsection (a) shall—

(1) be developed in consultation with affected project proponents, industries, and other stakeholders;

(2) exclude parties for which the fee would impose an undue financial burden or is otherwise determined to be inappropriate; and

(3) be established in a manner that ensures that the aggregate amount of fees collected for a fiscal year is estimated not to exceed 20 percent of the total estimated costs for the fiscal year for the resources allocated for the conduct of the environmental reviews and authorizations covered by this subchapter, as determined by the Director of the Office of Management and Budget.

(d) Environmental Review Improvement Fund

(1) In general

All amounts collected pursuant to this section shall be deposited into a separate fund in the Treasury of the United States to be known as the “Environmental Review Improvement Fund” (referred to in this section as the “Fund”).

(2) Availability

Amounts in the Fund shall be available to the Executive Director, without fiscal year limitation, solely for the purposes of administering, implementing, and enforcing this subchapter, including the expenses of the Council, appointing and fixing the compensation of such employees as the Executive Director considers necessary to carry out the roles and responsibilities of the Executive Director, and support of the role of the Council as a Federal center for permitting excellence, which may include supporting interagency detailee and rotation opportunities, advanced training, enhanced support for agency project managers, and fora for sharing information and lessons learned.

(3) Transfer

For the purpose of carrying out this subchapter, the Executive Director, with the approval of the Director of the Office of Management and Budget, may transfer amounts in the Fund to other Federal agencies and State, Tribal, and local governments to facilitate timely and efficient environmental reviews and authorizations for covered projects and other projects under this subchapter, including direct reimbursement agreements with agency CERPOs, reimbursable agreements, and approval and consultation processes and staff for covered projects.

(e) Effect on permitting

The regulations adopted pursuant to subsection (a) shall ensure that the use of funds accepted under subsection (d) will not impact impartial decision-making with respect to environmental reviews or authorizations, either substantively or procedurally.

(f) Transfer of appropriated funds

(1) In general

The heads of agencies listed in section 4370m-1(b)(2)(B) of this title shall have the authority to transfer, in accordance with section 1535 of title 31, funds appropriated to those agencies and not otherwise obligated to other affected Federal agencies for the purpose of implementing the provisions of this subchapter.

(2) Limitation

Appropriations under title 23 and appropriations for the civil works program of the Army Corps of Engineers shall not be available for transfer under paragraph (1).

(Pub. L. 114-94, div. D, title XLI, § 41009, Dec. 4, 2015, 129 Stat. 1760; Pub. L. 117-58, div. G, title VIII, § 70801(g), Nov. 15, 2021, 135 Stat. 1293; Pub. L. 117-328, div. E, title VI, § 635(b), Dec. 29, 2022, 136 Stat. 4704.)

Editorial Notes

CODIFICATION

Section was enacted as part of the Fixing America’s Surface Transportation Act, also known as the FAST Act, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

AMENDMENTS

2022—Subsec. (d)(2). Pub. L. 117-328 substituted “appointing and fixing the compensation of such employees as the Executive Director considers necessary to carry out the roles and responsibilities of the Executive Director” for “staffing of the Office of the Executive Director”.

2021—Subsec. (a). Pub. L. 117-58, § 70801(g)(1), added subsec. (a) and struck out former subsec. (a). Prior to amendment, text read as follows: “The heads of agencies listed in section 4370m-1(b)(2)(B) of this title, with the guidance of the Director of the Office of Management and Budget and in consultation with the Executive Director, may, after public notice and opportunity for comment, issue regulations establishing a fee structure for project proponents to reimburse the United States for reasonable costs incurred in conducting environmental reviews and authorizations for covered projects.”

Subsec. (b). Pub. L. 117-58, § 70801(g)(2), substituted “through 4370m-7” for “and 4370m-2”.

Subsec. (d). Pub. L. 117-58, § 70801(g)(3)(A), struck out “and Permitting” after “Review” in heading.

Subsec. (d)(2), (3). Pub. L. 117-58, § 70801(g)(3)(B), added pars. (2) and (3) and struck out former pars. (2) and (3) which read as follows:

“(2) AVAILABILITY.—Amounts in the Fund shall be available to the Executive Director, without appropriation or fiscal year limitation, solely for the purposes of administering, implementing, and enforcing this subchapter, including the expenses of the Council.

“(3) TRANSFER.—The Executive Director, with the approval of the Director of the Office of Management and Budget, may transfer amounts in the Fund to other agencies to facilitate timely and efficient environmental reviews and authorizations for proposed covered projects.”

§ 4370m-9. Application

This subchapter applies to any covered project for which—

(1) a notice is filed under section 4370m-2(a)(1) of this title; or

(2) an application or other request for a Federal authorization is pending before a Federal agency 90 days after December 4, 2015.